

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :
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-v- :
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LAWRENCE RAY, :
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Defendant. :
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USDC SDNY
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20-cr-110 (LJL)

ORDER

LEWIS J. LIMAN, United States District Judge:

The defense moves for reconsideration of the Court's order denying its motion to preclude the testimony of Matthew Frost on the theory that it is undisclosed expert testimony. The motion is denied. The Court previously addressed the issue at the final pretrial conference and denied the defense motion. Mar. 7, 2022, Tr. at 32:24–25. The proposed testimony is indistinguishable from that which the Second Circuit deemed not to be expert testimony in *United States v. Marsh*. 568 F. App'x 15, 16–17 (2d Cir. 2014) (summary order) (holding that testimony by agent on how he used Cellebrite technology to retrieve text messages and other data from a cellular telephone was not expert testimony). Mr. Frost is expected to testify about the data he retrieved from Backpage using the identifiers the agents provided to him. He has given similar testimony on numerous occasions without being qualified as an expert. The Report of Examination dated February 24, 2022, filed by the defense and disclosed by the Government yesterday does not show otherwise. It simply reflects that Mr. Frost conducted searches at the request of the investigative team based on criteria given to him by Special Agent Maguire and that the results were burned to optical media. The defense has not demonstrated by prejudice by the disclosure of the February 24 Report of Examination yesterday, and to the extent there would be any prejudice, it will have had two days to prepare for the cross-examination.

SO ORDERED.

Dated: March 16, 2022
New York, New York



LEWIS J. LIMAN
United States District Judge